

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

XAVIER POSTON,

Plaintiff,

v.

OPINION AND ORDER

19-cv-958-bbc

MICHAEL JULSON, THEODORE ANDERSON,
LT. OLSON, BRYAN GERRY, CO TAYLOR,
CO ROWER, CO JOSHUA KRAFT, CO LANG
AND CO KANE,

Defendants.

Pro se plaintiff Xavier Poston, who is incarcerated at Columbia Correctional Institution, is proceeding on claims that correctional staff at the prison kept him in a restraint suit in disciplinary segregation for five days without a break and under inhumane conditions, in violation of his rights under the Eighth Amendment. Two issues require resolution in this case.

First, defendant “CO Kane” is a Doe defendant who has never been served because the Attorney General’s office could not determine his identity. On January 22, 2021, Magistrate Judge Crocker entered an order requiring the following: (1) plaintiff shall have until February 5, 2021 to serve a discovery request with respect to the identity of the Doe defendant; (2) defendants must respond to the discovery request within 30 days; and (3) if he chooses to do so, plaintiff must file his amended complaint identifying the Doe defendant within seven days of defendants’ response to plaintiff’s discovery request. Dkt. #25. The deadlines for plaintiff’s discovery request and amended complaint have long since passed

without any response from plaintiff. Therefore, defendant CO Kane will be dismissed from this lawsuit.

Second, on February 3, 2021, defendants filed a motion for summary judgment. Plaintiff's response was due on March 5, 2021, but on March 4, plaintiff filed a motion for an extension of that deadline. He was given until March 19, 2021 to respond. To date, plaintiff has failed to file any materials in opposition to defendants' motion. His failure to respond suggests that he may have lost interest in pursuing his case and no longer intends to prosecute it. Therefore, I will give plaintiff one more opportunity to submit a substantive response to defendants' motion for summary judgment. If he fails to do so by the new deadline, I will dismiss this case with prejudice under Rule 41 of the Federal Rules of Civil Procedure for plaintiff's failure to prosecute it.

ORDER

IT IS ORDERED that:

1. Defendant CO Kane is DISMISSED.

2. Plaintiff Xavier Poston may have until April 19, 2021 to file a response to defendants' motion for summary judgment. If he does not respond by that date, I will dismiss this case with prejudice under Fed. R. Civ. P. 41 for plaintiff's failure to prosecute it.

Entered this 6th day of April, 2021.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge